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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,996	01/24/2001	Jeffrey T. Harvey	111-005	4188

20874 7590 01/28/2004

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SYRACUSE, NY 13202

EXAMINER
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A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/768,996

Applicant(s)

HARVEY, JEFFREY T.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present in claim 18 “ having been sheared” is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (GB876117) in view of Chen (5904015).

Walter (figures 3-4, 6) shows a raised load bearing floor system having a plurality of spaced apart support pedestals (46), said pedestals having coplanar horizontally disposed top surfaces (figure 4, top surface of 38), a plurality of high strength load bearing grate panels (52, 44, 50, figure 6), each panel having a series of perforations (54), the grate panels being mounted upon the coplanar top surfaces of the pedestals so that each grate panel being supported at each of its corners upon one of the pedestals, each of the grate panels being in abutting relation to establish a continuous raised load bearing sub floor over the terrace, a plurality of paving blocks (56) disposed onto a top surface of the grate panels, the paving blocks being arranged in an interlocking relationship upon the grate panels to establish an upper floor, the area between the pedestals being substantially greater than the surface area of each of the paving blocks, the

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blocks being fabricated of a material capable of sustaining heavy traffic without appreciable wear (inherently so as it is meant to be walked on).

Walter does not show each paving brick being evenly supported by a plurality of the perforations of at least one grate panel.

Chen shows each paving block (40) being evenly supported by a plurality of perforations (13, figure 2) of at least one grate panel to ensure the block is strongly supported even in the center.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Walter to show each paving brick being evenly supported by a plurality of the perforations of at least one grate panel because it would ensure the brick being evenly and strongly supported even in the center as taught by Chen.

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (GB876117) in view of Chen (5904015).

Walter as modified shows all the claimed limitations except for the grates being rectangular shaped.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Walter's modified structure to show the grates being rectangular shaped because rectangular, square, triangle etc... are all well-known supporting grate structural shapes selected to fit well known rectangular, square, triangle etc... shapes floor.

4. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (GB876117) in view of Chen (5904015) as applied to claim 13 above, and further in view of Faulkner (5363614).

Walter as modified shows all the claimed limitations except for the pedestals being of high-density foam, or polystyrene.

Faulkner discloses high-density foam polystyrene forming pedestals.

It would have been obvious to one having ordinary skill in the art at the time of the invention modify Walter's modified structure to show the pedestals being of high density foam, or polystyrene as taught by Faulkner because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (GB876117) in view of Chen (5904015) as applied to claim 13 above, and further in view of Focht (re20872).

Walter as modified shows all the claimed limitations except for a geotextile material located between the paving blocks and the grate panels.

Focht shows a sheet of protective material between the top of the grates and the paving blocks to provide cushion for the floor.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Walter's modified structure to show a geotextile material located between the paving blocks and the grate panels because it would provide cushion to the floor as taught by Focht.

6. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (GB876117) in view of Chen (5904015) as applied to claim 13 above, and further in view of Faulkner (5363614).

Walter shows all the claimed limitations except for each of the pedestals being fabricated of a heat shearable material, the pedestals being directly affixed in spaced apart relationship onto a non-horizontally level terrace substructure, the pedestals being of non-uniform heights having been sheared to produce top surfaces such that all the top surfaces of the pedestals are horizontal level with one another to form the coplanar top surfaces and the top surfaces being non-parallel with respect to corresponding pedestal lower surfaces.

Faulkner discloses high-density foam polystyrene forming pedestals (inherently heat shearable).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Walter's modified structure to show each of the pedestals being fabricated of a heat shearable material, the pedestals being directly affixed in spaced apart relationship onto a non-horizontally level terrace substructure, the pedestals being of non-uniform heights having been sheared to produce top surfaces such that all the top surfaces of the pedestals are horizontal level with one another to form the coplanar top surfaces and the top surfaces being non-parallel with respect to corresponding pedestal lower surfaces because having the pedestals made of heat shearable material would protect the pedestals against rust and giving the pedestals light weight, fixing the pedestals to non-horizontal level terrace substructure would allow the pedestals to support floor with uneven substructure as is provided for with the pedestal's threaded mating parts (14), and having the pedestals being of non-uniform height with the top surfaces of the pedestals at the same level while the surfaces being non-parallel to the corresponding pedestal lower surfaces would enable the pedestals to support the floor with uneven and different height substructure.

Per claim 19, Walter as modified shows all the claimed limitations except for the pedestals being affixed to the substructure by means of a polystyrene adhesive.

Faulkner (col 4 lines 3-8) discloses fixing pedestals to substructure by means of a polystyrene adhesive.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Walter's modified structure to show the pedestals being affixed to the substructure by means of a polystyrene adhesive because fixing the pedestals to the substructure with polystyrene adhesive would further enhance the securing of the pedestals to the subfloor, which would further enhance the stability of the pedestals supporting the floor.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 13-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A  
January 13, 2004



LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

